



August 30, 2000

Mr. Roland Castaneda  
General Counsel  
Dallas Area Rapid Transit  
P.O. Box 660183  
Dallas, Texas 75206-0163

OR2000-3364

Dear Mr. Castaneda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138508.

The Dallas Area Rapid Transit ("DART") received a request for the following nine categories of information:

1. Complete copy of the personnel file of Ms. Sandra Labenske
2. Complete copy of the personnel file of Mr. Shawn Ashan
3. Complete copy of the control disbursement list for the period June 9-July 24, 2000
4. All papers concerning your arrangements [with] Bank of America on the depositor's agreement including but not limited to stop pays, change backs, withdrawal and vendor relationship
5. All documents concerning cash management's policies and procedures with respect to Dart internal policies on Vendors request for stop pays
6. All document, notes, e-mails, tape recordings, mental expressions and thoughts incomplete of complete notes, diaries, handwritten reports correspondence that Ms. Sandra Labenske has had with Ms Tammie Danfort, Beverly Wolfe or any other Bank of America official that relate in any way to her refusal to stop payment on check 27386 by Paradigm Business communications. For each instance depict the time and approximate date.

7. All documents, notes, e-mails, tape recordings, mental expressions and thoughts incomplete or complete notes, diaries, handwritten reports correspondence that Shawn Ashan had with Ms Tammie Danfort, Beverly Wolfe or an other Bank of America official that relate in any way to his refusal to stop payment on check 27386 by Paradigm Business communications. For each instance depict the time and approximate date.
8. All documents that refer to point to that relate in any way to the number of stop pays that Dart has made with respect to vendors for each vendor state whether it was a minority
9. All documents that concern and relate to any reports complete or incomplete that mental expression or thoughts Shawn Ashan or Sandra Labenske has prepared, going to prepare and whether that report was forwarded to any member of the Executive Offices of Dart or any member of outside Dart including but not limited to Bank of America

You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.117 and 552.130 of the Government Code. You have provided a representative sample of the responsive information to this office for review.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The applicability of this section ends once the litigation has been concluded. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Further, to be excepted under section 552.103, the information must relate to litigation that is pending or reasonably anticipated on the date that the information was requested. Gov't Code § 552.103(c). To determine that the information relates to the anticipated or pending litigation, we follow the rule that "ordinarily, the words 'related to' mean 'pertaining to,' 'associated with' or 'connected with.'" *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.).

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You refer to Open Records Letter Nos. 2000-1980 (2000) and 2000-1779(2000), in which this office found that litigation regarding this requestor was reasonably anticipated. You have supplied a letter from the requestor wherein he asserts that the requested information relates to a "long list of grievances for remedy." We construe your comments to incorporate those arguments you raised regarding the previous decisions. Based on your arguments and the submitted information, we conclude that you have demonstrated that litigation was reasonably anticipated on the date that you received the current request and that the submitted information relates to that anticipated litigation. However, not all of the responsive information may be withheld under section 552.103.

Absent special circumstances, where the opposing party to the anticipated litigation has had access to the records at issue, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there is no justification for now withholding that information from the requestor pursuant to section 552.103(a). Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Further, some of the responsive information falls within the ambit of Government Code section 552.022. In pertinent part this section provides:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

...

We have marked the types of information which you must release under section 552.022 of the Government Code. Other than information that the requestor has previously had access to, and the information designated here as subject to section 552.022 of the Government Code, the submitted information may be withheld during the pendency of the anticipated litigation.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/er

Ref: ID# 138508

Encl Submitted documents

cc: Mr. Michael A. Elam  
Paradigm Business Communications  
3920 Guston Hall Court  
Plano, Texas 75025  
(w/o enclosures)